

In reply address
Judge Advocate General of the Navy
and refer to No.
18-2(2)/L4-3(400916)P

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C.

Apr. 11, 1941

Sirs:

By letter of March 3, 1941 (No. P18-2(2)/L4-3(400916)), the Secretary of the Navy authorized certain changes in Contracts Nod-1430, Nod-1432, Nod-1433, Nod-1497, Nod-1500, Nod-1503 and Nod-1642.

On page two of the above referenced letter, in the change under Article 17(d) of the General Provisions, reference was inadvertently made to claims for reimbursement under paragraphs "(a) or (b)" of that Article when paragraphs "(b) or (c)" were intended.

It is requested that the change letter be corrected by substituting "(b) or (c)" for "(a) or (b)" under Article 17(d).

By direction of the Secretary of the Navy.

Respectfully,

T. L. GATCH
Acting Judge Advocate General
of the Navy

Federal Shipbuilding
and Dry Dock Company,
Kearny, New Jersey.

CC: BuShips
BuS&A
CompBd (3)
SupShip., Kearny
O.A.O. (Audit Division)

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March 3, 1941

is:

Articles 17(b), (c) and (d) of the General Provisions form-
part of Contracts Nod-1430, Nod-1432, Nod 1433, Nod-1497,
Nod-1500, Nod-1503 and Nod-1642, provide for reimbursement of
Contractor by the Navy Department of the additional cost
incurred in connection with overtime and shift work, where
such overtime or shift work has been approved by the Navy
Department.

In order to extend these provisions to subcontracts,
the Secretary of the Navy hereby authorizes the following
changes in the General Provisions of each of the above-
mentioned contracts:

Article 17(b):

Line 1 - after the word "contractor", insert
the words "or any subcontractor under this
contract".

Line 5 - after the word "contractor", insert
the words "or such subcontractor".

Line 7 - after the word "contractor", insert
the words "or such subcontractor".

Article 17(c):

Line 1 - after the word "contractor", insert
the words "or any subcontractor under this
contract".

Line 4 - after the word "contractor", insert
the words "or such subcontractor".

Line 6 - after the word "contractor", insert
the words "or such subcontractor".

Article 17(d):

Line 1 - after the word "contractor", insert the words and punctuation", or any subcontractor under this contract on whose behalf the contractor claims reimbursement under paragraphs (a) or (b) of this article,".

For the sake of clarity, the Secretary of the Navy hereby further modifies the General Provisions forming part of Contracts Nod-1430, Nod-1432, Nod-1433, Nod-1497, Nod-1500 and Nod-1503, as follows:

Article 23(d):

Line 9 - after "vessel/vessels", insert "hereby agrees,".

Article 12(c) of Contracts Nod-1430, Nod-1433, Nod-1497, Nod-1500, Nod-1503 and Nod-1642, authorizes the Contractor, with the written approval of the Secretary of the Navy or the Chief of the Bureau of Ships as his duly authorized representative, to enter into subcontracts on a cost-plus-a-fixed-fee basis, on a price-adjustment basis, or on such other basis as may be approved. In order to permit the Contractor to modify existing subcontracts under this provision, the Secretary of the Navy hereby modifies each of these contracts as follows:

Article 12(c):

Line 5 Change the period following the word "approved" to a semicolon and add the following:

"similarly, if the contractor shall have obtained in advance such written approval, he may, by agreement with the subcontractor, change any subcontract to a cost-plus-a-fixed-fee basis, a price-adjustment basis, or such other basis as may be approved "

By letter of February 19, 1941, form of Contract Nod-2 for the construction of four Destroyers Nos. DD645 to , inclusive, was forwarded to the Contractor for execution. If this contract has not been forwarded to the Navy

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-3-

Department, it is requested that the above changes, except that applying to Article 23(d) of the General Provisions, which has already been made, be inserted in all copies of Contract NOD-1732 and the General Provisions forming thereof, and that appropriate entries covering such insertions be added under Article 14 of the contract and Article of the General Provisions.

It is requested that receipt of this letter be acknowledged.

Respectfully,

James Forrestal

Acting Secretary of the Navy

General Shipbuilding and Dry
Dock Company,
New Jersey.

AShips CompBd (2)
SupShip, Kearny C.A.O. (Audit Div)
AS&A

than subcontractors' cancellation charges, which the contractor shall have incurred on account of such cancellation, including reasonable compensation to it for the use of property of a contractor occupied or required by the unfinished vessel/vessels until final disposition thereof, determined by the aforesaid Board; (5) the contractor shall be entitled to the costs as determined by the aforesaid Board with profit at 8.7 percent of the costs on items (1), (2), (3), and (4). The contractor, furthermore, will be reimbursed, without profit to him, for any additional amounts including subcontractors' cancellation charges made by the contractor with the approval of the Compensation Board by reason of the aforesaid cancellation of this contract.

(b) The amount which the Department shall pay to the contractor pursuant to the provisions of the foregoing paragraph (a) will be ascertained, estimated, and determined by the Compensation Board as soon as practicable after such cancellation is ordered. The amount so determined, when approved by the Secretary of the Navy (after a hearing, if desired by the contractor), shall be the amount that shall be paid to the contractor in full settlement of its claims under this contract: *Provided*, That the Secretary of the Navy may, in advance of final payment, make partial payments as amounts shall be found by the Compensation Board to be due to the contractor. As a condition precedent to final payment the contractor shall execute a release, in such form and containing such terms and conditions as shall be prescribed by the Secretary of the Navy, of all claims against the United States arising under or by virtue of this contract or the cancellation hereof.

12. The contractor will notify the Department not less than 30 days beforehand of the date of launching each vessel so that a sponsor for the vessel may be selected. Board.

13. The contractor shall notify the Department in writing at least 2 weeks in advance of the actual date for starting trials and the approximate date for starting trials shall be furnished at least 30 days in advance. Launching.

14. Each vessel shall be sufficiently strong to carry safely the personnel and the armament, torpedoes, ammunition (including torpedoes and their appendages), equipment, fuel oils, stores, machinery prescribed by the Department and indicated in the plans and specifications; the vessel shall be accepted only on condition that she shall, after the trials prescribed in the contract, be found to be strong and well built as defined therein and in strict conformity therewith. Trials.

15. The contractor shall notify the Department in writing at least 2 weeks in advance of the proposed for delivery. After one-half of the contract time has expired the contractor shall, on the first day of each succeeding calendar month until the vessel is completed, inform the Department of the estimated date of completion. Strength.

16. The contractor shall be informed of all defects and deficiencies developing during the warranty period specified in this contract and for which it is held responsible, and, wherever practicable, the contractor shall be given an opportunity to inspect the defects and deficiencies which the contractor is responsible before they are corrected; and the decision of the Secretary of the Navy or the Chief of the Bureau of Ships, as his duly authorized representative, as to the responsibility of the contractor for such defects and deficiencies shall be final and binding on the contractor. The actual cost of correcting all defects and deficiencies for which the contractor is held responsible shall be deducted from the payment to be made in final settlement of this contract, or by refund if the amount reserved is exceeded by the amount to be deducted: *Provided*, That in order to expedite such final settlement, if the work of correcting any reported defects and deficiencies shall not have been undertaken when final settlement is due, the cost of correcting such defects and deficiencies may be determined as a charge provided in this contract, and the amount so determined deducted in lieu of the actual cost of such items in final settlement. Delivery.

17. (a) During the continuance of the national emergency declared by the President of the United States on September 8, 1939, to exist, but not later than June 30, 1942, unless otherwise provided by law, the provisions of the law prohibiting more than eight (8) hours' labor in any day of persons engaged upon work covered by this contract shall, in accordance with the approved June 28, 1940 (Public, No. 671, 76th Cong., 3d sess.), be suspended. Contractor to be notified of defects.

The provisions of Section 303 of the "Second Supplemental National Defense Appropriation Act, 1941," approved September 9, 1940 (Public, No. 781, 76th Cong., 3d sess.), are applicable to this contract. Night-hour law.

(b) If the contractor, in the interest of National Defense, employs, with the approval of the Department, any person or persons upon the work covered by this contract in excess of (8) hours in any one day or of forty (40) hours in any one week, the Department will reimburse the contractor as determined by the Compensation Board for the net excess of the wage paid by the contractor over and above the regular wage rates paid by it for such overtime and the resultant increased State and Federal Social Security taxes actually paid by the contractor, to the sum of all of which shall be added 8.7 percent as profit thereon. Over-time.

(c) If the contractor, in the interest of National Defense, employs, with the approval of the Department, any person or persons on work other than day work, the Department will reimburse the contractor as determined by the Compensation Board for the net excess, if any, of the wages paid by the contractor over and above the regular day wage rates paid by it for the type of work, and the resultant increased State and Federal Social Security taxes actually paid by the contractor, to the sum of all of which shall be added 8.7 percent thereof, as profit. Shift work.

(d) The contractor shall maintain such records as shall be necessary, in order that it may fully show the amount of money actually paid by it for such overtime work and/or shift work. Contract labor.

(e) The contractor shall not employ any person undergoing sentence of imprisonment at the time of such employment. Labor statistics.

(f) The contractor will report monthly, and will by agreement require its subcontractors to do so in like manner, within 5 days after the close of each calendar month, on forms to be furnished by the United States Department of Labor, the number of persons on their respective contracts, the aggregate amount of such pay rolls, the man-hours worked, and the total expenditure for materials. The contractor shall furnish to the Department of Labor the names and addresses of all subcontractors on the work at the earliest date practicable: *Provided*, However, the requirements of this paragraph shall be applicable only for work at the site of the construction project. Advisory concerning rates of pay for labor.

(g) Pursuant to the provisions of the Act approved June 13, 1934 (40 U. S. C. 276 (b) and (c)) concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Navy have jointly promulgated the following regulations (amended March 29, 1937):

SECTION 1. Said Act reads as follows:

"To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whosoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, extortion, bribery, threat, intimidation, or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both."

"Sec. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week."

"Sec. 3. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:

STATE OF _____

County of _____ (Name of party signing affidavit), (Title), do hereby certify that I am the employee of _____ (Name of contractor or subcontractor) who supervises the payment of the employees of said contractor or subcontractor, and that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor or subcontractor for the construction of _____ (project), for the _____ day of _____, 1941, to the _____ day of _____, 1941; that no rebates or reductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat, or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any such paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above-named project.

Witness my hand and seal this _____ day of _____, 1941.

Sec. 3. Said affidavit shall be executed and sworn to by the officer or employee of the contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered, within seven days after the payment of the pay roll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such seven-day period to the Federal agency having control of the project.

Sec. 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the contractor or subcontractor, setting forth the name of its employee who supervises the payment of employees, and that such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the contractor or subcontractor is a corporation, such affidavit shall be executed by its president or a vice president. In the event that the contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

(A) This contract is subject to the provisions of the Act of June 25, 1936 (40 U. S. C. 290), entitled "An Act to provide more adequate protection to workmen and laborers on projects, buildings, constructions, improvements, and property wherever situated, belonging to the United States of America, by granting to the several States jurisdiction and authority to apply their State workmen's compensation laws on all property and premises belonging to the United States of America."

(i) The construction of the vessel/vessels shall be in accordance with the provisions of the Act approved June 30, 1936 (41 U. S. C. 35-45), and the regulations issued by the Secretary of Labor in pursuance thereof, to the extent that said provisions and regulations and the representations and stipulations herein set forth are applicable to this contract, unless such course, in the judgment of the President of the United States, shall not be in the interest of the National Defense (Act approved May 17, 1938) (34 U. S. C. 498), and unless the President of the United States shall, in accordance with the Act approved June 28, 1940 (Public No. 671, 76th Cong.), suspend any or all of the representations and stipulations of Section 1 of the aforesaid Act.

(j) It is agreed and understood that this contract will be performed subject to the representations and stipulations of the Act approved June 30, 1936 (41 U. S. C. 35-45) and regulations issued by the Secretary of Labor pursuant thereto as follows:

(1) The contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of this contract.

(2) All persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of this contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under this contract: *Provided, however,* That this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(3) No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of this contract shall be permitted to work in excess of 8 hours in any one day or in excess of 40 hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(4) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in this contract.

(5) No part of this contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under this contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of this contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of this contract, and a sum equal to the amount of any

Workmen's compensation insurance.

Walsh-Healey Act.

Representations and stipulations pursuant to the Walsh-Healey Act.

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Payments

vessels as a part thereof, a lien in favor of the United States shall attach immediately to said materials and shall be discharged on the completion and delivery of the vessel/vessels as to any materials not then incorporated as a part thereof. Said lien is, pursuant to the provisions of the Act approved August 22, 1911, paramount.

(b) No payments shall be made except on vouchers in septuplicate, certified by the Supervisor of Shipbuilding, in such form as shall be directed by the Secretary of the Navy.

(c) All warrants for payments under the contract shall be made payable to the contractor or its order.

(d) When payment is to be made under this contract, as a condition precedent thereto, the Secretary of the Navy, in his discretion, may require evidence satisfactory to him, to be furnished by the contractor, showing what, if any, liens or rights in rem of any kind against the vessel/vessels, or the machinery, fittings, or equipment, or the materials on hand for use in the construction thereof, have been or can be acquired for or on account of any work done, or any machinery, fittings, equipment, or material already incorporated as a part of the vessel/vessels, or on hand for use in the construction thereof; but the contractor, for itself and on its own account and for and on account of all persons, firms, associations, and corporations furnishing labor and material for the vessel/vessels, and this contract is upon the express condition that no liens or rights in rem of any kind shall lie or attach upon or against the vessel/vessels or the machinery, fittings, or equipment, or the materials thereof, or any part thereof, or of any of them, for or on account of any work done upon or about the vessel/vessels, machinery, fittings, equipment, or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause, or thing, or of any claims or demands of any kind, except the claims of the Department: *Provided, however*, That, in case by reason of the laws of any State the contractor shall be unable to comply with such express condition, then the Secretary of the Navy may waive such condition or take such other action as he may deem proper under the circumstances.

(2) When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the contractor, it shall be entitled within 10 days after the filing and acceptance of its request therefor to receive the special reserve, or so much thereof as it may be entitled to, on the execution of a release, in such form and containing such terms and conditions as shall be prescribed by the Secretary of the Navy, of claims against the United States arising under or by virtue of this contract: *Provided, however,* That the Secretary of the Navy may, in his discretion, make partial payments on account of the special reserve and of any other balances due in advance of final settlement.

24. Should any surety upon the bond for the performance of this contract or upon the bond for payment of persons supplying labor or material hereunder become unacceptable to the Department, or if any such surety shall fail to furnish reports as to his financial condition from time to time as requested by the Department, the contractor shall furnish promptly such additional security as may be required from time to time to protect the interests of the Department and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

25. The following changes were made in these General Provisions before this contract was signed by the parties thereto:

[illegible]

Accepted as forming part of Navy Department Contract NOd 1497 of September 9, 1940.

Approved:

FEDERAL SHIPBUILDING & DRY DOCK COMPANY

---/s/ L.H. Korndorff.....
President Contractor.

.../s/ James Forrestal
Acting Secretary of the Navy.

SMF
Caj

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